

222472

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, DC**



**Docket No. AB-409 (Sub-No. 5X)**

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
- ABANDONMENT EXEMPTION -  
IN LOS ANGELES COUNTY, CA**

---

**PETITION FOR EXEMPTION FROM CONDITIONS GOVERNING  
OFFERS OF FINANCIAL ASSISTANCE AND  
PUBLIC USE**

---

Communications with respect to this document  
should be addressed to:

Charles A. Spitulnik  
W. Eric Pilsk  
Allison I. Fultz  
Kaplan Kirsch & Rockwell LLP  
1001 Connecticut Avenue, NW  
Suite 905  
Washington, DC 20036  
Phone: (202) 955-5600  
[cspitulnik@kaplankirsch.com](mailto:cspitulnik@kaplankirsch.com)  
[epilsk@kaplankirsch.com](mailto:epilsk@kaplankirsch.com)  
[afultz@kaplankirsch.com](mailto:afultz@kaplankirsch.com)

**ENTERED  
Office of Proceedings  
MAY 29 2008  
Part of  
Public Record**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, DC**

**Docket No. AB-409 (Sub-No. 5X)**

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
– ABANDONMENT EXEMPTION –  
IN LOS ANGELES COUNTY, CA**

---

**PETITION FOR EXEMPTION FROM CONDITIONS GOVERNING  
OFFERS OF FINANCIAL ASSISTANCE AND  
PUBLIC USE**

---

The Los Angeles County Metropolitan Transportation Authority (“LACMTA”) hereby submits this Petition for Exemption from Conditions Governing Offers of Financial Assistance and Public Use (“Petition for Exemption”) simultaneously and in connection with its Verified Notice of Exemption pursuant to 49 C.F.R. §1152, Subpart F – Exempt Abandonments and Discontinuances of Service and Trackage Rights in the above-captioned proceeding (the “NOE”). LACMTA is submitting the NOE to effect the abandonment of its residual common carrier obligation on a 0.31 mile line of railroad in Los Angeles County, California, from Milepost 485.69 to Milepost 486.00, which comprises a portion of a line known as the Santa Monica Industrial Lead (the “LACMTA Segment”).

LACMTA’s predecessor agency, the Los Angeles County Transportation Commission (“LACTC”), acquired the LACMTA Segment from Southern Pacific Transportation Company (“Southern Pacific”) in 1990. As a result of this transfer, LACTC acquired the real property associated with the LACMTA Segment, and Southern Pacific retained all operating rights and

the primary common carrier obligation. LACTC acquired a residual common carrier obligation as the owner of the LACMTA Segment, over which service was being provided by Southern Pacific *So. Pac. Transp. Co. – Abandonment Exemption – In Los Angeles Co., CA*, 8 I.C.C 2d 495, 508 (1992), *aff'd*, *So. Pac. Transp. Co. – Abandonment Exemption – In Los Angeles Co., CA*, 9 I.C.C.2d 385 (1993). As the successor in interest to LACTC, LACMTA now owns the physical assets of the LACMTA Segment and the residual common carrier obligation.

In this proceeding, LACMTA will effect the complete abandonment of any freight common carrier obligation on the LACMTA Segment. For the reasons set forth in detail below, LACMTA respectfully requests that the Board exempt the abandonment of the LACMTA Segment from the provisions of 49 U.S.C. §10904 (Offer of Financial Assistance or “OFA” procedures) and 49 U.S.C. §10905 (public use conditions).

### **Background**

The LACMTA Segment comprises a portion of the longer line that is the subject of a Notice of Abandonment and Discontinuance of Trackage Rights filed by Southern Pacific’s successor, Union Pacific Railroad Company (“UP”), on March 19, 2008, in AB-33 (Sub-No. 265X) (the “UP NOE”). *Union Pac R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Los Angeles Co., CA*, AB-33 (Sub-No. 265X) (Service Date May 7, 2008) (“UP Abandonment”). UP is discontinuing its common carrier obligations over the LACMTA Segment and abandoning a 0.08 mile segment of line that UP owns (the “UP Segment”). The exemption in the UP NOE became effective on May 8, 2008, subject to historic preservation conditions to allow the Board to complete its required historic preservation review pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. §470f. *UP Abandonment* at 2-3.

## **I. ARGUMENT**

Where a right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service, the Board will grant exemptions from the requirements of 49 U.S.C. §§10904 and 10905. *See, e.g., K & E R Co. – Abandonment Exemption – In Alfalfa, Garfield, and Grant Cos , OK, and Barber Cos , KS*, STB Docket No. AB-480X (Service Date December 31, 1996), *slip op.* at 4-5. As set forth in detail below, the circumstances here fully warrant an exemption from OFA and public use requirements.

**A. Exempting This Proceeding from OFA and Public Use Requirements Would Be Consistent with Recent Board Authorization Granted to the Holder of the Primary Common Carrier Obligation on the LACMTA Segment**

The Board recently authorized UP, the holder of the primary common carrier obligation, to discontinue its operating rights and obligations on the LACMTA Segment. The Board also granted UP abandonment authority for the contiguous UP Segment. *See UP Abandonment*. Significantly, the Board allowed the UP NOE to become effective without subjecting the UP Segment to OFA or public use conditions. *Union Pac. R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Los Angeles Co., CA – In the Matter of An Offer of Financial Assistance, slip op.*, STB Docket No. AB-33 (Sub-No. 265X) (Service Date May 7, 2008) (“*UP Abandonment II*”).

In *UP Abandonment II*, the Board concluded that there was no public or other policy purpose to be served in permitting a prospective offeror to submit an OFA for two reasons. First, there are no existing or potential shippers on the UP Segment. Second,

UP has presented persuasive evidence that this 0.08-mile segment is incapable of supporting rail service due to its short length. Moreover, there is no likelihood that any shipper would generate any traffic for movement over this segment, because, as UP explains, its narrow width (about 30 feet) precludes expansion or the construction of a second track or turnouts that would be necessary to perform switching operations that would be part of moving the traffic of any customer.

*UP Abandonment II, slip op. at 2.*

Because UP does not own the LACMTA Segment and therefore could not request abandonment authority for the LACMTA Segment, the Board did not address the suitability of the LACMTA Segment for OFA or public use conditions. *Id.* However, the LACMTA Segment and UP Segment share the characteristics of short length and lack of existing or potential shippers.

Accordingly, just as UP has sought and received authority to abandon the UP Segment without the imposition of OFA and public use conditions, the Board should exempt the abandonment of its contiguous sister, the LACMTA Segment.

**B. In View of LACMTA's Intended Use of the LACMTA Segment, Exemption from OFA and Public Use Requirements Would Be Consistent with Board Precedent**

The LACMTA Segment comprises part of the extensive network of rail lines acquired by LACTC in the early 1990's to facilitate the establishment of Los Angeles County's commuter and light rail transit network and dedicated busway. NOE at 4. The LACMTA Segment is part of the originally planned passenger transit network and is now necessary to support current construction activities and future operations. Once the LACMTA Segment is fully abandoned, LACMTA intends to use the LACMTA Segment for (1) a staging area for the storage of track and signal material and components; (2) parking for construction equipment used to construct and place into operation additional tracks, signals and buildings on LACMTA's light rail Blue Line right-of-way, which is adjacent to the LACMTA Segment; (3) construction of a traction power substation; (4) employee parking, and (5) future rail transit operations. *Id.* Additionally, in the short term, the proposed abandonment area is necessary to provide servicing and storage facilities for expanded light rail service that LACMTA will operate on the Exposition Light Rail

Line, which is currently under construction between Los Angeles and Culver City and for which LACMTA is developing plans to extend to Santa Monica. *Id.* at 4-5. The Exposition Light Rail Line will eventually connect with the existing Blue Line. *Id.* at 5. Accordingly, the LACMTA Segment will continue to be put to public use.

Furthermore, the LACMTA Segment, like the UP segment in *UP Abandonment II*, is not suitable for recreational use because the LACMTA Segment (1) is located in an area that is principally industrialized; (2) has no direct access from residential areas that might support any recreational use, and (3) is quite short – less than one third of a mile in length. Therefore, the right of way is not suitable for any other public use and the Board should exempt this abandonment proceeding from the imposition of public use conditions. *Id.*

The Board has exempted three other LACMTA abandonment proceedings from OFA and public use conditions. The critical facts of each of the prior proceedings are similar to those in the instant case: in each of these prior proceedings, (1) Southern Pacific sought to discontinue and LACMTA sought to abandon operating obligations over track varying in length from 2.40 to 5.88 miles, and (2) LACMTA sought to use the abandoned line for public transit purposes in each instance. *See So. Pac. Trans. Co. – Discontinuance of Service Exemption – In Los Angeles Co., CA*, STB Docket No. AB-12 (Sub-No. 169X) and *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 2X), consolidated proceedings (Service Date May 24, 1994) (“*LACMTA 2X*”); *So. Pac. Trans. Co. – Discontinuance of Service Exemption – In Los Angeles Co., CA*, STB Docket No. AB-12 (Sub-No. 171X) and *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 3X), consolidated proceedings (Service Date January 9, 1995) (“*LACMTA 3X*”) and *So.*

*Pac Trans Co. – Discontinuance of Service Exemption – In Los Angeles Co., CA, STB Docket No. AB-12 (Sub-No. 172X) and Los Angeles County Metropolitan Transportation Authority - Abandonment Exemption – In Los Angeles County, CA, STB Docket No. AB-409 (Sub-No. 4X), consolidated proceedings (Service Date December 23, 1994) (“LACMTA 4X”).*

In those cases, where, as here, SP was discontinuing and LACMTA was abandoning, the Board allowed the exemption from the OFA and public use conditions even though traffic had recently moved over the subject lines. *See, LACMTA 2X (slip op. at 2); LACMTA 3X (slip op. at 1); LACMTA 4X (slip op. at 1).* In each case, the Board made identical findings:

Because . . . LACMTA, the owner of the underlying property, intends to use the line's corridor for mass transit, [Southern Pacific] has framed its request for an exemption to extend also to [49 U.S.C. 10904], involving offers of financial assistance (OFA), and to [49 U.S.C. 10905], involving public use conditions. In the past, the Commission has granted this unusual relief when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service. Here, the right-of-way is already owned by a public entity and will continue to be used for an important public purpose.

*LACMTA 2X, slip op. at 2; LACMTA 3X, slip op. at 2; LACMTA 4X, slip op. at 2.*

In contrast to these previous circumstances, no traffic has moved over the LACMTA Segment in over two years. In addition, each of the lines being abandoned in *LACMTA 2X*, *LACMTA 3X* and *LACMTA 4X* were considerably longer than the LACMTA Segment's 0.31 mile, varying in length from 2.40 to 5.88 miles. Accordingly, the facts supporting the grant of exemption from OFA and public use conditions are even more compelling here than in these previous matters before the Board.

Finally, in each of the prior proceedings, the Board recognized that permitting the OFA to proceed would preclude use by the transit agency as planned, thus frustrating “the very purpose of the abandonment and discontinuance.” *LACMTA 2X, slip op. at 2; LACMTA 3X, slip op. at 2; LACMTA 4X, slip op. at 2.*

Here, the LACMTA Segment is only 0.31 miles long and has seen no traffic for over two years. As in the previous proceedings, LACMTA will use the abandoned segment for uses directly related to, and in support of, its public transit operations, a compelling public use. Accordingly, the facts in this proceeding clearly justify an exemption from OFA and public use requirements.

For the reasons set forth above, the Board should exempt the NOE from OFA and public use conditions.

## II. CONCLUSION

WHEREFORE, in light of the foregoing, LACMTA respectfully requests that the Board exempt the abandonment transaction from the provisions of 49 U.S.C. §10904 (OFA procedures) and 49 U.S.C. §109045 (public use conditions).

Respectfully submitted,



Charles A. Spitulnik

W. Eric Pilsk

Allison I. Fultz

Kaplan Kirsch & Rockwell LLP

1001 Connecticut Avenue, NW

Suite 905

Washington, DC 20036

Phone: (202) 955-5600

[cspitulnik@kaplankirsch.com](mailto:cspitulnik@kaplankirsch.com)

[epilsk@kaplankirsch.com](mailto:epilsk@kaplankirsch.com)

[afultz@kaplankirsch.com](mailto:afultz@kaplankirsch.com)



## **Certificate of Service**

I hereby certify that on this 29th day of May, 2008, I caused to be served a copy of the foregoing PETITION FOR EXEMPTION FROM CONDITIONS GOVERNING OFFERS OF FINANCIAL ASSISTANCE AND PUBLIC USE to be served by first class mail, postage prepaid, upon:

**Gabriel S Meyer  
Union Pacific Railroad Company  
1400 Douglas Street Stop 1580  
Omaha, NE 68179**

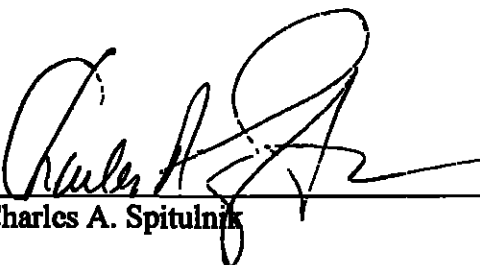
**Special Assistant for Transportation  
Engineering & Director  
Railroads for National Defense Program  
720 Thimble Shoals Boulevard, Suite 130  
Newport News, VA 23606-4537**

**James Riffin  
1941 Greenspring Drive  
Timonium, MD 21093**

**National Park Service  
Recreation Resources Assistance Division  
Pacific West Region  
One Jackson Center  
1111 Jackson Street, Suite #700  
Oakland, CA 94607**

**California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298**

**U.S. Department of Agriculture  
Chief of the Forest Service  
1400 Independence Avenue, S.W.  
Washington, DC 20250-0003  
Attn: Abigail Kimbell, Chief of the Forest  
Service**

  
\_\_\_\_\_  
Charles A. Spitulnik